

UNITED STATES DISTRICT COURT  
SOUTHERN DISTRICT OF NEW YORK

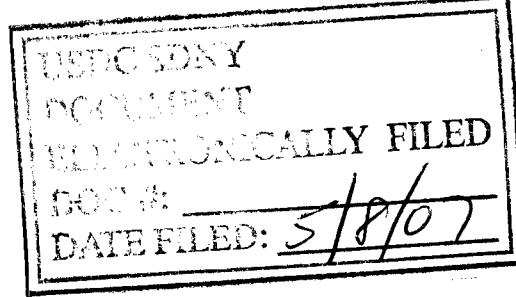
CONVERIUM HOLDING AG,

Plaintiff,

-against-

SCOR S.A. and PATINEX AG,

Defendants.



07 Civ. 3042 (GEL)

**ORDER**

GERARD E. LYNCH, District Judge:

Plaintiff Converium Holding AG seeks a conference or reference to a magistrate judge to resolve a discovery-related dispute. The Court has reviewed letters from both sides.

First, plaintiff has entirely ignored this Court's Individual Rule of Practice 2(F), by submitting a unilateral letter to chambers on a discovery dispute without adequate conferral with the other side and without attempting to construct a joint submission. This oversight alone would warrant disregarding plaintiff's submission.

Second, defendant SCOR S.A. contends that documents of the sort sought by plaintiff may not even exist, and in any event are not under defendant's control. The Court cannot conjure documents that a party contends do not exist. Plaintiff is entitled to a formal discovery response providing all responsive documents, and, where such documents do not exist or cannot be located, a written representation that a diligent search has been made for responsive documents and that none have been located beyond those provided. It is entitled to nothing more.

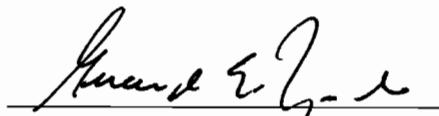
Finally, plaintiff also seeks permission to supplement its motion for a preliminary injunction by reference to any documents belatedly produced by defendant. Defendant contends that the request should be denied, because it has completed its search and has no more documents to provide. While defendant's confidence in the thoroughness of its search is impressive, it is far from unusual for additional materials to be discovered as litigation proceeds, particularly given the compressed timeframe for discovery and briefing of plaintiff's pending motion. Accordingly, plaintiff's request for permission to supplement its motion papers will be granted. Plaintiff is reminded that this permission is limited, as requested, to supplemental submissions necessitated by late-produced documents, and that it does not authorize additional submissions for any other purpose.

Accordingly, it is hereby ORDERED that:

1. Plaintiff's request for a conference or reference to a magistrate judge is denied.
2. Plaintiff's request for permission to supplement its motion for a preliminary injunction by reference to any documents belatedly produced by defendant is granted.

SO ORDERED.

Dated: New York, New York  
May 8, 2007

  
GERARD E. LYNCH  
United States District Judge